(Y)

Supreme Court, U.S.
FILED
SEP 5 - 1995
OFFICE OF THE CLERK

No. 95-522

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

GAYLE A. ROY, pro se - PETITIONER

vs.

MERIT SYSTEM PROTECTION BOARD - RESPONDENT

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Gayle A. Roy, pro se
4898 Basin Street
West Chester, Ohio 45069
(513) 860-3098

37pp

QUESTION PRESENTED

Did the United States Court of Appeals for the Federal Circuit violate due process procedures, guaranteed under the Fourteenth Amendment to the United States Constitution, when the Court refused to consider the whole, complete record; to include the newly discovered evidence which was unavailable at the close of the record by the Merit Systems Protection Board [MSPB]?

LIST OF PARTIES

1. Petitioner: Gayle A. Roy, pro se

2. Respondent: Merit System Protection Board

   a. United States Postal Service, et al
   b. US Dept. of Labor - Office of Workers' Comp.

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NO. _____

IN THE SUPREME COURT
OF THE UNITED STATES
October Term, 1995

Gayle A. Roy, pro se, Petitioner

vs.

Merit Systems Protection Board,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Petitioner, Gayle A. Roy, pro se, respectfully prays that a writ of certiorari issue to review the judgment [without opinion] of the United States Court of Appeals for the Federal Circuit, in which that court refused to consider the whole complete record (to include the newly discovered evidence which was unavailable at the close of the record by Merit Systems Protection Board - "MSPB"). Thereby violating Petitioner's right to due process.

OPINIONS BELOW

1. The denial of Petitioner's appeal to the United States Court of Appeals for the Federal Circuit, dated June 12, 1995, appears in Appendix A to this Petition.

2. The denial of Petitioner's Nunc Pro Tunc Motion (for newly discovered evidence) by the United States Court of Appeals

for the Federal Circuit, dated April 6, 1995, appears in Appendix B to this Petition.

By their own statement, the US Court of Appeals would not consider the complete record, which was unavailable prior to the close of the record by MSPB, but was submitted by this Petitioner to the US District Court.

3. Petitioner timely filed a "mixed case" suit against MSPB in United States District Court, Southern District of Ohio, Western Division, dated February 7, 1994.

District Court had jurisdiction pursuant to 42 USC §2000e-5.

After considering the complete record, to include the newly discovered medical evidence, US District Court transferred Petitioner's case to the jurisdiction of the United States Court of Appeals for the Federal Circuit under date of January 31, 1995 [Appendix C].

US District Court obviously recognized the validity of Petitioner's charges and did not dismiss Petitioner's complaint but instead transferred the case.

Transfer of jurisdiction was under 28 USC §1631.

4. This newly discovered medical evidence shows that a disability exists and Petitioner's case should not be dismissed on timeliness, as per MSPB's "initial decision" dated September 13, 1993 [Appendix D].

Merit Systems Protection Board's "final decision", dated January 12, 1994, appears in Appendix E to this petition.

5. Recently obtained medical documentation from the imminent world renowned orthopaedic surgeon Dr. Frank Noyes dated July 11, 1995 [Appendix F], further substantiates Petitioner's claims of denial of due process.

JURISDICTION

The judgment, without opinion, of the United States Court of Appeals for the Federal Circuit was filed on June 12, 1995.

This Court's jurisdiction is invoked under 28 USCS §1254(1) and 28 USCS §2101, n.13.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV to the United States Constitution is set forth in Appendix G.

STATEMENT OF THE CASE

It is, and was, the repeated denial of due process which caused this Petitioner to be persecuted, prosecuted, incarcerated and removed from the service of her government; the US Postal Service [PO]. As can be shown by the complete record:

1. On August 2, 1989, without a hearing by OWCP [in violation of 71 O.S. 3d 504], Petitioner was removed from workman's compensation rolls and put back under the jurisdiction of the PO; in order for the PO to prosecute Petitioner under 18 USC §1001 instead of 18 USC §1920 - citing U.S.A. v. Richardson, 9th Circuit Court, October 28, 1993.

This was accomplished through denial of due process, proven false written statements, along with repeated and now verified misdiagnoses, misleading information, and a "bogus" job offer by the PO (not in good faith).

These acts were in direct violation of 71 O.S. 3d 504; 5 CFR §2425.1(b); 5 USC §7116(a)(1),(8); 5 USC §7122; 5 USC §8106(c)(2) – regulations contained in 20 CFR §10.124; Section 8(d) National Labor Relations Act – contained in 29 USC section 158(d), good faith; ORC §2317.02; 5 USCS §2301(b)(9); 5 USCS §2302.

Also, the Employee - Labor Relations Manual (ELM) #547.33 and 547.34(c) states, "No employee shall be removed (from OWCP rolls) or their benefits affected until the medical issues are resolved."

2. On August 3, 1989, a letter of removal was issued by the PO.

3. On February 18, 1991, Arbitrator Rimmel ordered

physical and psychological examinations of this Petitioner.

If Petitioner were found to be fit, she was to be returned to service and made whole.

The PO and Arbitrator Rimmel were aware of an MRI dated March 8, 1990 when Arbitrator Rimmel passed down his award of February 18, 1991.

4. The PO blatantly ignored binding arbitration and made a conscious effort to violate:

5 CFR §2425.1(b) - which states that exceptions to arbitrator's awards are to be filed within 30 days. Which the Post Office DID NOT DO!

5 USC §7116(a)(1),(8) which states that a failure of an agency to implement arbitration award constitutes a violation, where no stay of award was requested, thus making the award final and binding.

And failure to implement an arbitrator's award constitutes an unfair labor practice under 5 USC §7116, §7122.

This Petitioner is held to the letter of the law on timeliness, then who is (or isn't) holding the PO to the letter of the law by not timely filing exceptions?

5. On April 10, 1991 Petitioner's attorney of record at that time, John Korfhagen, wrote a letter to Arbitrator Rimmel informing him of a non-compliance "impasse" by the PO.

Only the PO knew whether or <u>not</u> they were going to implement the arbitration award! Any American citizen should be able to expect their Government to abide by Federal laws!!

A copy of this letter was sent to the local PO representative Tom Lang.

6. The very next day, April 11, 1991, a second removal was issued by the PO.

Instead of complying with binding arbitration, the PO issued a 2nd removal <u>51 days</u> after the 1st arbitration award with the intention of nullifying their past procedural errors.

The second removal [dated April 11, 1991] is nothing more than an attempt by the PO to overcome the final and binding arbitration decision of Arbitrator Rimmel dated February 18, 1991.

Clearly, this is a violation of procedural due process.

Case law provides that an employer cannot escape a final and binding arbitration decision by instituting a second removal based upon the same conduct. Wilks v. American Bakeries Co. 87 Labor Arb Rep 707; 116 Labor Rel Manual 2687 (5-3-83).

7. Had the PO implemented the 18 Feb. 91 arbitration award, as required by law, the ordered exams would have certainly shown the same results as the MRI dated March 8, 1990 - that there was an on-going disability that resulted from an "on the job injury."

AND this on-going disability has existed up to and including this date - as can be proven by the newly discovered evidence, which was unavailable prior to the close of the record by MSPB.

THUS, if the PO had implemented the arbitration award, their case would have gone right out the window as a jurisdiction issue existed.

8. Had MSPB considered the medical evidence, as the arbitrator did, timeliness would not have been an issue.

MSPB Judge Detjen would have seen that due process had been denied from the very beginning. [By OWCP not granting Petitioner a hearing as per 71 O.S. 3d 504]

9. The US Court of Appeals for the Federal Circuit also refused to consider the complete and relevant record, as previously stated.

10. MSPB Administrative Judge Mary L. Detjen stated in her INITIAL DECISION, Docket #CH-0752-93-0577-I-1, dated September 13, 1993, on page 1 [under Introduction] "The Board has jurisdiction over this appeal. See 5 U.S.C.A. §§7511-7513 (West 1980)." [Petitioner's Appendix D].

A. Section 5 USCS §7121(d) provides that the selection of the negotiated procedure will not prejudice the right of the employee to appeal a "final decision" to the MSPB in the case of a personnel action that otherwise could be appealed to the Board (e.g. a "mixed" case). Thus, in discrimination matters handled under a negotiated procedure, the arbitrator's decision will become the "final agency action" and under Section 717 of

Title VII of the Civil Rights Act of 1964, such decision allows the employee to appeal. The authority of the MSPB to review final agency actions, which may be arbitrator's awards, stems from 5 USC §7702 which refers solely to matters which are appealable to MSPB involving an allegation that the action was discriminatory ("mixed case").

B. Under 5 USCS §7121, n 23 - "Claim of prohibited discrimination filed with Board by aggrieved employee transcends and is exception to restriction in §7121 on appeal to Board after he has grieved his removal through arbitration, and Board has jurisdiction of claim and is required by statutes to decide. Jones v. Department of Navy, (1990, CA FC) 898 F2d 133, 52 BNA FEP Cas 625. 53 CCH EPD ¶39748."

This clearly states that as a "preference eligible", Petitioner is entitled to file with the MSPB AFTER she had grieved a second removal THROUGH arbitration; that MSPB had jurisdiction, and was bound by law, to hear her "mixed case" appeal as it was timely filed on August 16, 1993.

C. On page 2 of the PO's "Motion to Dismiss" filed with MSPB under date of August 27, 1993, Richard Acker [PO rep] states:

> "a decision was rendered concerning Appellant's grievance appeal on July 23, 1993 by Arbitrator Carl F. Stoltenberg. The Appellant's appeal was denied, and the agency's action upheld. The Appellant was separated from the rolls of the agency, effective the date of the arbitration award."

* The PO used July 28, 1993 to issue a Form 50 and terminate Petitioner from the postal service.

* Petitioner used July 28, 1993 as the date to compute the timeliness of filing with MSPB (20 days from July 28, 1993 falls on August 16, 1993).

11. MSPB issued it's "final decision" on January 12, 1994 [Appendix E] - Petitioner's appeal was denied on a timeliness issue.

Despite due diligence, the newly discovered evidence was unavailable and not submitted for consideration, prior to the

closing of the record by MSPB.

This evidence is of sufficient weight to warrant an outcome different from that of the "initial decision" by MSPB [Appendix D].

12. The US Court of Appeals denied Petitioner's Motion of Nunc Pro Tunc on April 6, 1995 [Appendix B].

MSPB had submitted selected parts of the record for that Court's consideration. Not the whole record.

Without reviewing the complete record, to include the newly discovered evidence, due process has been denied this Petitioner; Starting with the Post Office, OWCP and MSPB, continuing up to and through the US Court of Appeals for the Federal Circuit.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted in order that due process, guaranteed under the Fourteenth Amendment to the United States Constitution [Appendix G] be granted to this Petitioner. As the right to due process has been repeatedly denied throughout this entire case.

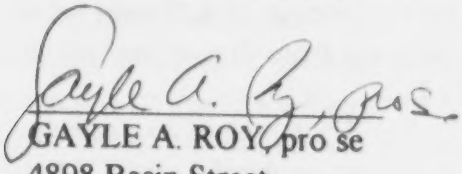
CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment of the United States Court of Appeals for the Federal Circuit in this matter.

If this Court elects not to address the issues presented in this writ at the present time, it is requested that the writ issue and that the matter be remanded to the US Court of Appeals for the Federal Circuit for a review of the complete record, including the newly discovered evidence.

DATED: August 31, 1995.

Respectfully submitted,



GAYLE A. ROY, pro se
4898 Basin Street
West Chester, Ohio 45069
(513) 860-3098

US COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Notice of Entry of Judgment
Without Opinion

Judgment Entered: June 12, 1995

The judgment of the court in your case was entered today pursuant to Rule 36. This Court affirmed the judgment or decision that was appealed. None of the relief sought in the appeal was granted. No opinion accompanied the judgment. The mandate will be issued in due course.

Information is also provided about petition for rehearing and suggestions for rehearing in banc. The questions and answers are those frequently asked and answered by the Clerk's Office.

Costs are taxed against the Petitoner(s) in favor of the Respondent(s) under Rule 39. The party entitled to costs is provided a bill of costs form and an instruction sheet with this notice.

The parties are encouraged to stipulate to the costs. A bill of costs will be presumed correct in the absence of a timely filed objection.

Costs are payable to the party awarded its costs. If costs are awarded to the government, they should be paid to the Treasurer of the United States. Where costs are awarded against the government, payment should be made to the person(s) designated under the governing statutes, the court's orders, and the parties' written settlement agreements. In cases between private parties, payment should be made to counsel for the party awarded costs or, if the party is not represented by counsel, to the party pro se. Payment of costs should not be sent to the court. Costs should be paid promptly.

Exhibits and visual aids shall be promptly retrieved by the party that lodged them with this court.

Francis X. Ginderhart
Clerk

cc: Gayle A. Roy
Melissa A. Pollack

ROY V MSPB, 95-3253 (MSPB - CH0752930577I-1)

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record. The disposition will appear in tables published periodically.

US COURT OF APPEALS FOR THE FEDERAL CIRCUIT

95-3253

Gayle A. Roy, Petitioner

v.

Merit Systems Protection Board, Respondent

JUDGMENT

On Appeal from the Merit Systems Protection Board in Case No(s) CH0752930577-I-1. This Cause having been heard and considered, it is Ordered and Adjudged:

Per Curiam: (RICH, PLAGER, and CLEVENGER, Circuit Judges): AFFIRMED. See Fed. Cir. R. 36

ENTERED BY ORDER OF THE COURT

Dated Jun 12 1995 s/Francis X. Gindhart pt

Francis X. Ginderhart, Clerk

Filed

US Court of Appeals for the

Federal Circuit

Jun 12 1995

Francis X Ginderhart, Clerk

ISSUED AS A MANDATE: August 3, 1995

NOTE: Pursuant to Fed. Cir. R. 47.6, this order is not citable as precedent. It is a public record.

US COURT OF APPEALS FOR THE FEDERAL CIRCUIT

95-3253

Gayle A. Roy, Petitioner

v.

Merit Systems Protection Board, Respondent

ON MOTION

Before BRYSON, Circuit Judge.

ORDER

Gayle A. Roy moves to supplement the record on review.

Roy requests that documents that were not before the Merit Systems Protection Board be included in the record on review. However, this court is reviewing what the Board did in this case and our review is confined to the record before the Board. See Fed. R. App. 16(a) (the record on review is comprised of the order sought to be reviewed, the findings or report on which it is based, and the pleadings, evidence and proceedings before the agency).

Accordingly,

IT IS ORDERED THAT:

Roy's motion is denied.

4/6/95
Date

s/William C. Bryson
William C. Bryson
Circuit Judge

cc: Gayle A. Roy
Melissa A. Pollack, Esq.

Filed
US Court of Appeals for
the Federal Circuit
Apr - 7 1995
Francis X. Gindhart
Clerk

A-4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Filed
Kenneth J. Murphy
Clerk
Feb 1 3:35PM '95

GAYLE A. ROY,
Plaintiff,

V.

UNITED STATES POSTAL SERVICE, et al.
Defendants.

Case No. C-1-94-088
ORDER AFFIRMING MAGISTRATE'S REPORT AND RECOMMENDATION AND TRANSFERRING CASE

This matter is before the Court on the Magistrate Judge's Report and Recommendation (doc. 17), to which the Plaintiff has objected.

The Plaintiff, who brings this action pro se, is a former United States Postal Service worker who claims to have been discharged unfairly. The Plaintiff filed a grievance which was decided against her. She then filed an appeal with the Merit Systems Protection Board (MSPB). The MSPB dismissed her appeal as untimely. She also contended that she was a victim of handicap discrimination.

In reviewing the Plaintiff's claim the Magistrate Judge points out the proper forum for review of the Plaintiff's appeal of the threshold jurisdictional ruling by the MSPB is the Court of Appeals for the Federal Circuit. See Ballentine v. Merit System Protection Board, 738 F.2d 1244, 1246-47 (Fed. Cir. 1984). Turning to the Plaintiff's handicap discrimination claim, the Magistrate Judge reports that in cases where there is a mixed question of discrimination and an appeal of a MSPB jurisdictional ruling, a party may proceed to a district court. 5 U.S.C. §7703(b). However, prior to initiating a discrimination action in a district court, federal employees must pursue their allegations either through the EEOC or the MSPB. Plaintiff

filed with the MSPB. However, as we have just seen above, that MSPB action was dismissed as untimely. Therefore, the Magistrate Judge recognized that the issue of the timeliness of the Plaintiff's administrative claim before the MSPB, is the threshold issue of both her claims. Since we do not have jurisdiction over this issue, the Magistrate Judge recommends that we transfer this case to Federal Circuit. See 28 U.S.C. §1631.

Having reviewed this matter de novo pursuant to 28 U.S.C. §636, we find that the Magistrate's Report and Recommendation is correct.

Accordingly, we ADOPT Magistrate Judge's report and AFFIRM the Magistrate Judge's recommended decision. We hereby TRANSFER this matter to the United States Court of Appeals for the Federal Circuit.

SO ORDERED.

Dated: 1/31/95

s/S. Arthur Spiegel
S. Arthur Spiegel
United States District Judge

I certify that this is a true and
correct copy of the original filed
in my Office on 2/1/95.
KENNETH J. MURPHY, CLERK
BY: s/Vicki Penley
Deputy Clerk
Date: 2/2/95

A-6

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Filed
Kenneth J.Murphy
Clerk
Feb 1 3:57PM '95

Gayle A. Roy
Plaintiff(s),

v.

C-1-94-088

United States Postal Service, et al
Defendant(s).

JUDGMENT IN A CIVIL CASE

Decision by Court: This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

Accordingly we ADOPT MJ report and AFFIRM the MJ recommended decision; this case is hereby TRANSFERRED to the United States court of Appeals for the Federal Circuit.

February 1, 1995

Kenneth Murphy, Clerk
Deputy Clerk
s/Vicki Penley

I certify that this is a true and correct copy of
the original filed in my Office on 2/1/95.
KENNETH J. MURPHY, CLERK
By: s/V Penley
Deputy Clerk
Date: 2/3/95

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CHICAGO REGIONAL OFFICE

Gayle A. Roy,
Appellant,

v.

United States Postal Service,
Agency.

DOCKET NUMBER
CH-0752-93-0577-I-1

Date: September 13, 1993

Gayle A. Roy, West Chester, Ohio, pro se.
Richard L. Acker, Cincinnati, Ohio, for the agency.

BEFORE

Mary L. Detjen
Administrative Judge

INITIAL DECISION

INTRODUCTION

On August 16, 1993, the appellant appealed from the agency's decision to remove her, effective April 20, 1991, for unacceptable conduct. The Board has jurisdiction over this appeal. *See* 5 U.S.C.A. §§7511-7513 (West 1980).

For the reasons discussed below, this appeal is DISMISSED.

TIMELINESS

An appeal from an agency's action must be filed within 20 days of the effective date of the action. *See* 5 C.F.R. §1201.22(b) (1993). If an appellant does not submit the appeal within the time limit, it will be dismissed unless the appellant establishes good cause for the untimely filing. *See* 5 C.F.R. §1201.22(c) (1993).

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

Gayle A. Roy,
Appellant,

DOCKET NUMBER
CH-0752-93-0577-I-1

v.

United States Postal Service,
Agency.

Date: Jan 12 1994

Gayle A. Roy, West Chester, Ohio, pro se.
Helen A. Nicholas, Philadelphia, Pennsylvania, for the agency.

BEFORE

Ben L. Erdreich, Chairman
Jessica L. Parks, Vice Chairman
Antonio C. Amador, Member

ORDER

After full consideration, we DENY the appellant's petition for review of the initial decision issued on September 13, 1993, because it does not meet the criteria for review set forth at 5 C.F.R. §1201.115. This is the Board's final order in this appeal. The initial decision in this appeal is now final. 5 C.F.R. §1201.113(b).

NOTICE TO APPELLANT

You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal if the court has jurisdiction. *See* 5 U.S.C. §7703(a)(1). You must submit your request to the court at the following address:

United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. *See* 5 U.S.C. §7703(b)(1).

FOR THE BOARD:

s/----------

Robert E. Taylor
Clerk of the Board

Washington, D.C.

CINCINNATI SPORTSMEDICINE AND ORTHOPAEDIC CENTER

Date: 7/11/95

Location: One Lytle Place, Cincinnati, Ohio 45202

Patient name: GAYLE ROY

Ms. Roy comes back in today for follow-up on the left knee problem. She is diagnosed as having left saphenous neuritis and left patellofemoral arthrosis on that side. Her problems all commenced November 28, 1985 when had an injury to her left knee. Since that time she has had symptoms of saphenous nerve reflex syspathetic dystrophy (RSD). She has received treatment for that medically to this point. She has also had patellofemoral arthrosis treated by surgery. She underwent arthroscopy of her left knee 11/3/93.

Today she comes back in with an interest in transferring her care from Dr. Noyes to Dr. Broadnax. This is being done at the request of the Department of Labor. She also requests a very specific statement as to what her prognosis, specific injury, and ailment are.

PHYSICAL EXAMINATION today reveals a left knee that has no effusion. She has full flexion of that knee. She does have some mild lateral joint line tenderness. Otherwise, her tenderness is to palpation along the pes anserinus tendon. She does have saphenous impingement type symptoms with pressure in the posteromedial aspect of her left knee. Examination of her calves reveal hypersensitivity along the saphenous distribution starting approximately 2 to 3 cm. below the joint line and extending distally. Examination of the patellofemoral joint reveals moderate crepitance in it. There is only mild pain to patellar compression.

IMPRESSION:

Left saphenous neuritis with possible entrapment symptoms and/or sympathetically maintained syndrome. All these are symptoms referable

back to her original injury in 1985.

She is currently under the care of Dr. Broadnax and, in fact, we believe this is the appropriate place for her to continue getting her regular care. We believe this because, right now, her saphenous neuritis is her major complaint. We also feel, at the present time, the patellofemooral arthrosis has had all possible treatment orthopaedically performed. Furthermore, with her saphenous neuritis, though it is not full at this time, we do not wish to inflame it or exacerbate those symptoms at all by proceeding with left knee procedures.

Given the situation, we would like to transfer her care to Dr. Broadnax. We also would like her to re-start her patellofemoral exercise program when she is cleared for that by Dr. Broadnax.

We would like to see her in consultation.

CARL W. NISSEN, M.D.
CLINICAL ASSOCIATE

FRANK R. NOYES, M.D.

wby
R: 7/12
T: 7/14

AMENDMENT XIV TO THE UNITED STATES CONSTITUTION

Section 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Code Service - Constitution Amendments 13 - End Index

Amendment 14, n 21 —

Touchstone of due process is protection of individual against arbitrary action of government. Wolff v. McDonnel, (1974) 418 US 539, 41 L. Ed 2d 935, 94 S Ct. 2963, 71 Ohio Ops 2d, 336.

(2)

Supreme Court, U.S.
FILED

No. 95 • 522 SEP 5 - 1995

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

GAYLE A. ROY, pro se, PETITIONER

vs.

MERIT SYSTEM PROTECTION BOARD, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITION FOR WRIT OF CERTIORARI SUPPLIMENTAL APPENDIX

Gayle A. Roy, pro se
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17 pp

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
KENNETH J. MURPHY
CLERK
SEP 27 9:13AM 94

Gayle A. Roy,
Plaintiff,

CASE NO. C-1-94-88

vs.

United States Postal Service, et al.,
Defendants

NOTICE

Attached hereto is the Report and Recommended Decision of the Honorable Robert A. Steinberg, United States Magistrate Judge, which was filed on 27 Sep 1994. Any party may object to the Magistrate Judge's findings, recommendations and report within ten (10) days after being served with a copy thereof or further appeal is waived. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). Such parties shall file with the Clerk of Court, and serve on all parties, the Judge and the Magistrate Judge, a written Motion to Review which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made, along with a memorandum of law setting forth the basis for such objection. (Such parties shall file with the Clerk a transcript of the specific portions of any evidentiary proceedings to which an objection is made).

In the event a party files a Motion to Review the Magistrate Judge's Findings, Recommendations and Report, all other parties shall respond to said Motion to Review within ten (10) days after being served a copy thereof.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
KENNETH J. MURPHY
Clerk
Sep 27 9:30am 94

Gayle A. Roy,
Plaintiff

vs

Case No. C-1-94-088

United States Postal Service, et al.,
Defendants

REPORT AND RECOMMENDATION

This matter is before the Court on Defendants' motion to dismiss or in the alternative for summary judgment (Doc. 7), *pro se* Plaintiff Gayle A. Roy's response (Doc. 9), and Defendants' reply. (Doc. 10).

Roy began her employment with the United states Postal Service in 1981. In 1985, she was place on total disability due to a knee injury. In February 1989, she returned to work in a limited duty status, for two hours a day. In June 1989, Roy advised a Postal Service medical officer that she was unable to work under limited duty status, due to alleged problems involving her neck, back, shoulder, leg and side. Upon investigation of the matter in June and July 1989, Roy was observed mowing her lawn, walking without a crutch, driving an automobile, carrying, bending, and stooping. Consequently, on August 3, 1989, the Postal Service issued Roy a notice of proposed removal for providing false information to a postal medical officer. (Doc. 7, Ex. 2). Roy filed a grievance and the matter proceeded to arbitration.

In April 1990, Roy was indicted for conduct stemming from her allegedly fraudulent collection of benefits under the Federal Employees Compensation Act. This indictment was dismissed at the government's request. Based on the same conduct, Roy was again indicted in November 1990. This indictment was dismissed under the Speedy Trial Act. Based

on the same conduct, Roy was indicted yet a third time in January 1991.

In February 1991, the arbitrator issued an award requiring Roy to undergo a fitness for duty examination, which would be determinative of whether she should be reinstated. (Doc. 7, Ex. 7, p.8).

In March 1991, a jury convicted Roy on three courts of making false statements in violation of 18 U.S.C. §1001, one court of mail fraud in violation of 18 U.S.C. §§1341 and 1342, and two counts of making false claims in violation of 18 U.S.C. §287. She was sentenced to imprisonment for a term of six months. (Doc. 7, Ex. 3). On appeal, the Sixth Circuit upheld this conviction. (Doc. 7, Ex.4).

On April 11, 1991, the Postal Service issued Roy a notice of proposed removal for unacceptable conduct regarding her March 1991 felony conviction. (Doc. 7, Ex.5). On April 18, 1991, the Postal Service issued Roy a letter of decision, with an April 20, 1991 effective discharge date. (Doc. 7, Ex.6). The letter notified Roy of her right to appeal her removal to the Merit Systems Protection Board within twenty days of the effective date of that decision. Instead, on April 24, 1991, Roy filed a grievance, contending that her discharge was arbitrary, capricious, punitive, without just cause, constituted double jeopardy, and was contrary to the February 1991 arbitration award. (Doc. 7, Ex.7, p.2). On July 28, 1993, her grievance was denied. The arbitrator found that Roy's discharge was based on her criminal conviction rather than on her providing false information to a postal medical officer. Thus, the discharge was not found to constitute double jeopardy. The arbitrator also found just cause to support the discharge. (Doc. 7, Ex. 7).

On August 16, 1993, Roy filed an appeal to the Merit Systems Protection Board (MSPB) regarding her April 20, 1991 discharge. (Doc. 7, Ex.8). In her appeal, Roy contended, among other things, that she was the victim of handicap discrimination and reprisal for whistleblowing and

filing a union grievance. (Id.). In its September 13, 1993 initial decision, the MSPB dismissed Roy's appeal as untimely. (Doc. 7, Ex.9). The administrative judge's decision was based on 5 C.F.R. §1201.22(b)(1993), which provided that the appeal of an agency action to the MSPB must be filed within twenty days of the effective date of the action. (Id., p.1). The administrative judge did not address the merits of Roy's claim. (Id., p.4). Roy's petition for review was denied by the MSPB on January 12, 1994. (Doc. 7, Ex.10). The January 12, 1994 Order advised Roy that she had thirty days to request judicial review of the MSPB decision by the Court of Appeals for the Federal Circuit. (Id.). Instead, on February 7, 1994, Roy filed her complaint with this Court. (Doc.1). She filed an amended complaint on April 7, 1994. (Doc.3).

Roy's amended complaint states that her action is brought pursuant to Title VII under Civil Rights Act of 1964, specifically 29 U.S.C. §2000e-5. (Doc.3, ¶3). She claims discrimination with respect to "reprisal and retaliation for whistleblowing, exercising my union rights and discrimination against the disabled[1] because of an on the job injury." (Doc.3, ¶6). She also claims "violation of civil rights, denial of procedural due process, abuse of power, use of false statement, removal from Workman Comp[ensation] Rolls without due process, [and] not abiding by binding arbitration." (Doc.3, ¶4). Roy has named seventeen individual Defendants: fifteen Postal Service employees; a Workers' Compensation claims examiner; and an Assistant United States Attorney. She seeks back pay, reinstatement, front pay, expenses, and attorneys' fees. She also requests that the case be remanded to the MSPB and the Office of Special Council for a full investigation and to include newly discovered medical evidence from November 1993.

42 U.S.C. §2000e-5 (Title VII) prohibits employment

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[1] In her original complaint, Roy also alleged sex discrimination. She did not include this allegation in her amended complaint. Thus, Roy has not brought a sex discrimination claim.

discrimination on the basis of race, color, religion, sex, or national origin. 42 U.S.C. §2000e-16 prohibits employment discrimination against federal employees on the basis of race, color, religion, sex, or national origin. Discrimination on the basis of handicap is prohibited by 29 U.S.C. §794, which expressly incorporates the remedies, procedures, and rights of 42 U.S.C. §2000e-16. 29 U.S.C. §794a(a)(1). *Smith v. Unites States Postal Service*, 742 F2d 257, 259 (6th Cir. 1984). We interpret Roy's amended complaint at paragraph 6 to allege a claim of handicap discrimination. Whistleblowing and the exercise of union rights are not protected activities under Title VII. *See* 42 U.S.C. §2000e-16. We interpret Roy's amended complaint at paragraph 4 to be a request for judicial review of the January 12, 1994 MSPB order.

Defendants contend that this Court lacks subject matter jurisdiction on Roy's request for judicial review of the MSPB Order. With regard to her discrimination claim, Defendants contend that Roy failed to timely exhaust her administrative remedies and that she failed to name the proper defendant.

THIS COURT LACKS SUBJECT MATTER JURISDICTION ON ROY'S REQUEST FOR JUDICIAL REVIEW OF THE MSPB ORDER

Petitions for judicial review of MSPB actions that do not involve discrimination claims are filed with the Court of Appeals for the Federal Circuit and are reviewed on the administrative record. 5 U.S.C. §7703(b)(1). Where a claim of discrimination is coupled with a nondiscrimination claim, the entire "mixed case" shall be filed with the appropriate District Court. 5 U.S.C. §7703(b); *Romain v. Shear*, 799 F2d 1416, 1420, n.1 (9th Cir. 1986), *cert. denied*, 481 U.S. 1050 (1987); *Ballard v. Tennessee Valley Authority*, 768 F2d 756, 757, n.1 (6th Cir. 1985). This allows for a unitary, rather than bifurcated, judicial review of the MSPB decision. *Ballentine v. Merit Systems Protection Board*, 738 F2d 1244, 1246 (Fed. Cir. 1984). In a mixed case, the plaintiff has the right to a trial *de novo* on the discrimination claim. 5 U.S.C. §7703(c). The

nondiscrimination claim in a mixed case is reviewed on the administrative record. Id.; *Romain*, 799 F2d at 1421. However, when an action is appealed to the MSPB, until the discrimination issue and the appealable action have been decided on the merits by the MSPB, the plaintiff has no right to a trial *de novo* and the proper court to perform judicial review is the Federal Circuit. *Ballentine*, 738 F2d at 1246-47. This process results in a unified body of caselaw on procedural or threshold issues, not related to the merits of discrimination claims, to be decided by the Federal Circuit. Id. at 1247. *See also Synan v. Merit Systems Protection Board*, 765 F2d 1099, 1101-02 (Fed. Cir. 1985); *Wall v. United States*, 871 F2d 1540, 1542-43 (10th Cir. 1989), *cert denied*, 493 U.S. 1019 (1990).

In the present action, the September 1993 MSPB initial decision[2] dismissed Roy's August 1993 appeal to the MSPB as untimely, having been filed more than two years after the effective date of her April 1991 discharge. The MSPB did not rule on either the merits of her discrimination claim or her grievance claim, i.e., whether the discharge constituted double jeopardy or was otherwise improper.

Thus, we find that Roy's request for judicial review of this threshold issue, whether her August 1993 MSPB appeal was timely filed, must be made to the Federal Circuit and that this Court has no subject matter jurisdiction over that issue. *See Ballentine*, 738 F2d 1244.

ROY'S HANDICAP DISCRIMINATION CLAIM SHOULD ALSO BE DISMISSED

It is well established that a Title VII plaintiff must exhaust the available administrative remedies as a condition to bringing a civil action. *Brown v. General Services Administration*, 425 U.S. 820, 832 (1976); *Haithcock v.*

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[2] The January 1994 MSPB order denied Roy's petition for review of the September 1993 initial decision, making the initial decision final.

Frank, 958 F2d 671, 675 (6th Cir. 1992). Likewise, a handicapped person must exhaust all administrative remedies as a condition to seeking redress in federal court under the Rehabilitation Act. *Haithcock*, 958 F2d 675. If a plaintiff has not first presented a claim to the appropriate administrative agency, that claim may not be brought before the federal court. *See* id. The requirement that a plaintiff exhaust the administrative remedies prior to instituting suit ensures that the administrative agency will be afforded the opportunity to attempt conciliation and voluntary settlement, the preferred means for resolving employment discrimination suits. Id.

Federal employees may pursue their allegations of discrimination either through the Equal Employment Opportunity Commission (EEOC) or the MSPB, but not both. 29 C.F.R. §1613.403(1993); 5 C.F.R. §1201.151 (1994). The employee has thirty days from the date of the alleged discriminatory event to file a complaint with the EEOC. 29 C.F.R. §1613.214(a)(1993). The employee has twenty days from the date of the agency action complained of to file an appeal with the MSPB. 5 C.F.R. §1201.154 (1994).

Defendants submitted the uncontroverted affidavit of Henry Valines, Senior EEO Complaints Processing Specialist for Cincinnati, Ohio, that Roy initiated no EEO process regarding her April 1991 removal. (Doc.7, Ex.11). Roy contends that the EEOC "refused" to accept her complaint in February 1994. Assuming, *arguendo*, that Roy's allegation is true, it is not determinative because to be timely, Roy's EEOC filing had to be made within thirty days after April 20, 1991. *See* 5 C.F.R. §1201.154 (1994). Roy also references a June 1989 EEOC complaint, which she alleges was "refused" by the EEOC. (Doc.9, p.5[3]). Assuming, *arguendo*, that Roy's allegation is true, it is not determinative because a 1989 EEOC complaint could not have been made regarding her 1991

[3] The pages of Roy's response are not consecutively numbered; we are referring to physical page 5 of her pleading.

discharge. *See* id. Furthermore, the alleged timeliness of Roy's February 1994 filing with this Court is not relevant to the timeliness of the required EEOC or MSPB filings.

Thus, we find that Roy did not timely initiate the proper administrative process prior to the filing of her discrimination claim. *See Haithcock*, 958 F2d at 675. Since Roy failed to exhaust the available administrative remedies, her handicap discrimination claim should be dismissed. *See* id.

In view of the above, it is not necessary for us to address Defendants' contention that Roy's complaint should be dismissed for failing to name the proper defendant.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Filed
Kenneth J. Murphy
Dec 5 10:57AM '94

Gayle A. Roy,
Plaintiff,

vs.

Case No. C-1-94-088

United States Postal Service, et al.,
Defendants

NOTICE

Attached hereto is the Amended Report and Recommended Decision of the Honorable Robert A. Steinberg, United States Magistrate Judge, which was filed on 5 December 1994. Any party may object to the Magistrate Judge's findings, recommendations and report within ten (10) days after being served with a copy thereof or further appeal is waived. *See United States v. Walters*, 638 F2d 947 (6th Cir. 1981). Such parties shall file with the Clerk of Court, and serve on all parties, the Judge and the Magistrate Judge, a written Motion to Review which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made, along with a memorandum of law setting forth the basis for such objection. (Such parties shall file with the Clerk a transcript of the specific portions of any evidentiary proceedings to which an objection is made).

In the event a party files a Motion to Review the Magistrate Judge's Findings, Recommendations and Report, all other parties shall respond to said Motion to Review within ten (10) days after being served a copy thereof.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Filed
Kenneth J. Murphy
Clerk
Dec 5 10:57AM '94

Gayle A. Roy,
Plaintiff

vs

Case No. C-1-94-088

United States Postal Service, et al.,
Defendants

AMENDED REPORT AND RECOMMENDATION

This matter is before the Court on a remand order (Doc.14) and Plaintiff Gayle A. Roy's motion to review report and recommendation (Doc.13). Plaintiff has also filed a supplemental affidavit to her motion to review. (Doc.15). Defendants have not filed a responsive memorandum.

Defendant discharged Roy in April 1991 for unacceptable conduct regarding a March 1991 felony conviction. Roy filed a grievance, which was decided against her on July 28, 1993. On August 16, 1993, Roy filed an appeal with the Merit Systems Protection Board (MSPB). She also contended she was a victim of handicap discrimination. In a September 13, 1993 Initial Decision, the MSPB dismissed Roy's appeal as untimely, because it was not filed within twenty days of the effective date of the adverse employment action. The MSPB did not address the merits of Roy's claims. The Initial Decision was finalized by the MSPB's January 12, 1994 Order. On February 7, Roy filed a complaint with this Court. She filed an amended complaint on April 7, 1994.

In her amended complaint, Roy requests judicial review of the January 12, 1994 MSPB Order. She also raises a handicap discrimination claim. On September 27, 1994, this Court filed its Report and Recommendation recommending dismissal of Roy's complaint. (Doc.12). With regard to Roy's request for judicial review of the January 1994 MSPB Order,

we recommended a finding that subject matter jurisdiction over the threshold issue of the timeliness of Roy's August 1993 MSPB appeal rests with the Federal Circuit. (Doc.12, pp.4-5). We also recommended dismissal of Roy's handicap discrimination claim because she did not timely initiate the proper administrative process, either through the Equal Employment Opportunity Commission (EEOC) or the MSPB, prior to the filing of her discrimination claim. (Doc.12, pp.5-6) We did not reach the merits of her claim.

The newly discovered evidence that we are asked to consider on remand is an August 16, 1994 letter to Roy from the United States Department of Labor, Office of Workers' Compensation Programs, which reads as follows: Let this letter serve as verification that the charges for the arthroscopic surgery from the 1993 left knee surgery will be paid from this office. (Doc.11, Ex.A; Doc.13, Ex.1)[1].

Roy contends this letter supports her position that she presently has a disabling job-related injury and that this injury has existed since November 1985. (Doc.13, p.2). She also contends that the MSPB would have decided the case differently had it known this information at the time of its September 1993 Initial Decision.

Roy's contentions are without merit. The August 1994 letter was not in existence at the time of the either MSPB's September 1993 Initial Decision or January 1994 Order. Assuming, *arguendo*, that the August 1994 letter does support Roy's contention that she was disabled in November 1985, it does not relate to the issue decided in the MSPB's September 1993 Initial Decision or the Court's September 1994 Report and Recommendation, namely, that Roy's August 1993 MSPB appeal was not timely filed.

Thus, we find no basis to amend the September 1994

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[1] Although this letter was first filed with the Clerk's Office on Friday, September 23, 1994, the Court was not advised or aware of the filing when it filed the Report and Recommendation on Tuesday, September 27, 1994.

Report and Recommendation regarding Roy's newly discovered evidence.

In addition to the issue of newly discovered evidence, Roy's motion to review raises other issues, the majority of which relate to the merits of her claim that she was wrongfully discharged. These other issues are not properly before this Court because it is the District Judge in the first instance who addresses issues raised in a motion to review a Report and Recommendation. Furthermore, as stated earlier, neither the September 1994 Report and Recommendation nor the MSPB Order from which Roy appeals reached the merits of her claims.

For several reasons, however, it is appropriate to address Roy's contention that as a preference eligible employee, she is entitled to dispute her removal both via a MSPB appeal and a negotiated grievance procedure. Roy briefly touched on this argument on page four of an attachment to her response (Doc.9) to Defendant's motion. She as expanded her position somewhat in her motion to review. (Doc.13, p.5). Also, this contention arguably relates to the timeliness of her April 1993 MSPB appeal, which was the subject of the September 1994 Report and Recommendation.

Roy contends that her August 1993 MSPB appeal was timely because it was filed within twenty days of the July 1993 arbitration decision. In support of her contention, Roy cites to 5 U.S.C. §7121 and to *Jones v. Department of the Navy*, 898 F2d 133 (Fed. Cir. 1990). (Doc.13, p.5).

5 U.S.C. §7121(d), which applies to mixed cases, states that an aggrieved employee "may raise the matter under a statutory procedure or the negotiated procedure, but not both." The statute further states: Selection of the negotiated procedure in no manner prejudices the right of the aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to section 7710 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal

Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination . . .

Roy contends that a reasonable interpretation of the statute is that you cannot do both things at the same time because that would overburden the system. (Doc.13, p.5). In *Jones*, the Federal Circuit held that in cases involving discrimination claims, an aggrieved employee who has contested an agency action through arbitration proceedings has an absolute right to request the MSPB to review the arbitrator's decision. 898 F2d at 134-135. *See also* 5 C.F.R. §1201.154(d); *American Federation of Government Employees*, Local 2052 *v. Reno*, 992 F2d 331,334-335 (D.C. Cir. 1993).

Citing *Bacashihua v. Merit Systems Protection Board*, 811 F2d 1498, 1502 (Fed. Cir. 1987) and two other Federal Circuit cases, Defendants contend that 5 U.S.C. §7121 and its implementing regulation are not applicable to the postal service, therefore that postal service employees may not directly appeal arbitration decisions to the MSPB. (Doc.7, p.9.n.9). Neither *Jones* nor *Local* 2052 involved postal service employees.

Citing *Lewis v. United States Postal Service*, 47 M.S.P.R. 228 (1991) and *Shrider v. United States Postal Service*, 26 M.S.P.R. 238 (1985), the administrative law judge found in her September 1993 MSPB Initial Decision that pursuit of a grievance does not provide good cause for waiver of the MSPB's twenty day time limit for the filing of an appeal.

Regardless of the appropriate legal analysis, the issue is whether Roy's August 1993 MSPB appeal was timely. Subject matter jurisdiction over Roy's request for judicial review of this threshold issue rests with the Federal Circuit, and not with this Court. *See* Doc.12, pp. 4-5, *citing Ballentine v. Merit System Protection Board*, 738 F2d 1244 (Fed. Cir. 1984). This results in a unified body of caselaw on procedural or threshold issues, not related to the merits of discrimination

claims, to be decided by the Federal Circuit. Id. Roy has not distinguished *Ballentine* or otherwise shown why *Ballentine* should not apply in this case.

Therefore, we continue to recommend that this Court has no subject matter jurisdiction over Roy's request for judicial review of the January 1994 MSPB Order.

We now turn to Roy's handicap discrimination claim. Because her complaint included a discrimination claim, Roy filed her complaint in this Court. *See* 5 U.S.C. §7703(b). Prior to initiating a discrimination action in court, federal employees must pursue their allegations either through the EEOC or the MSPB. (Doc. 12, p.6.). Thus, whether Roy exhausted her administrative remedies prior to the filing of her administrative claim depends, at least in part, on the timeliness of Roy's August 1993 MSPB appeal. Because a threshold jurisdictional issue exists, subject matter jurisdiction lies with the Federal Circuit. Pursuant to 28 U.S.C. §1631, whenever a civil action is filed in a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action to any other court in which the action could have originally been brought. Thus, rather than dismissing Roy's complaint, as was recommended in the September 1994 Report and Recommendation, it would be more appropriate to transfer this action to the Federal Circuit. *See* 28 U.S.C. §1631. If the Federal Circuit finds that Roy's August 1993 MSPB appeal was timely, then the matter will presumably be remanded to the MSPB to consider the merits of Roy's claims. *See Wall v. United States*, 871 F2d 1540, 1543 (10th Cir. 1989).

IT IS THEREFORE RECOMMENDED THAT:

This case be TRANSFERRED to the Federal Circuit to determine the timeliness of Roy's 1993 MSPB appeal and to determine whether she exhausted her administrative remedies with regard to her handicap discrimination claim.

Date: 12-2-94 s/_____

Robert A. Steinberg, US Magistrate Judge

CINCINNATI SPORTSMEDICINE AND ORTHOPAEDIC CENTER

Date: 7/11/95

Location: One Lytle Place, Cincinnati, Ohio 45202

Patient name: GAYLE ROY

Ms. Roy comes back in today for follow-up on the left knee problem. She is diagnosed as having left saphenous neuritis and left patellofemoral arthrosis on that side. Her problems all commenced November 28, 1985 when had an injury to her left knee. Since that time she has had symptoms of saphenous nerve reflex syspathetic dystrophy (RSD). She has received treatment for that medically to this point. She has also had patellofemoral arthrosis treated by surgery. She underwent arthroscopy of her left knee 11/3/93.

Today she comes back in with an interest in transferring her care from Dr. Noyes to Dr. Broadnax. This is being done at the request of the Department of Labor. She also requests a very specific statement as to what her prognosis, specific injury, and ailment are.

PHYSICAL EXAMINATION today reveals a left knee that has no effusion. She has full flexion of that knee. She does have some mild lateral joint line tenderness. Otherwise, her tenderness is to palpation along the pes anserinus tendon. She does have saphenous impingement type symptoms with pressure in the posteromedial aspect of her left knee. Examination of her calves reveal hypersensitivity along the saphenous distribution starting approximately 2 to 3 cm. below the joint line and extending distally. Examination of the patellofemoral joint reveals moderate crepitance in it. There is only mild pain to patellar compression.

IMPRESSION:

Left saphenous neuritis with possible entrapment symptoms and/or sympathetically maintained syndrome. All these are symptoms referable back to her original injury in 1985.

She is currently under the care of Dr. Broadnax and, in fact, we believe this is the appropriate place for her to continue getting her regular care. We believe this because, right now, her saphenous neuritis is her major complaint. We also feel, at the present time, the patellofemooral arthrosis has had all possible treatment orthopaedically performed. Furthermore, with her saphenous neuritis, though it is not full at this time, we do not wish to inflame it or exacerbate those symptoms at all by proceeding with left knee procedures.

Given the situation, we would like to transfer her care to Dr. Broadnax. We also would like her to re-start her patellofemoral exercise program when she is cleared for that by Dr. Broadnax.

We would like to see her in consultation.

CARL W. NISSEN, M.D.
CLINICAL ASSOCIATE

FRANK R. NOYES, M.D.

wby
R: 7/12
T: 7/14